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Building sustainability, justice and peace**

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Going it alone...

John Howard's 21st Century Workplace

The Howard Government holds true to the conservative mission - to turn back the gains of organised labour, our rights and political influence. Since the formation of the Liberal Party, and from way back in the 1880s, this credo has been the central plank and organising principle of political conservatives.

Whether the conservatives succeed will as ever be determined by politics and culture. The question is whether Australians will accept the overturn of a century of legal rights and cultural practices in the workplace. The campaign will test unions and the ALP as never before to see whether they can convince workers that they stand for their interests. The problem is that the institutions created by organised labour, unions and the ALP, have too often themselves become vehicles for the self-interest of officials and professional politicians.

At best the Howard challenge could prove a vehicle for renewal in the labour movement; a powerful impetus to organise more effectively. At worst some unions could collapse, as some did in New Zealand, reminding us that no institutions are guaranteed a place by history. Militancy, organisation and community education informed by a strategic approach by an independent union movement will be essential for survival.

A broad anti-conservative alliance can be built to work against the re-election of the Howard Government and to work for effective opposition policies to provide workers' and human rights.

Federal-State power-play

With a clear Senate majority, the Howard/Costello agenda against workers is being revealed in a massive power-play between the conservative Federal government and Labor state and territory governments which extends over a range of key government roles - industrial relations, health, education and training, taxation and even ports.

The danger is that industrial relations will be sacrificed by rightwing ALP governments to appease the Federal Government's demands. As a consequence Australia could lose the international place it has held in labour rights since Federation as the network of tribunals established to hear disputes and grievances in conciliation and arbitration are either shut down or lose their independence and powers.

In their place will be the sandbagged Industrial Relations Commission, staffed largely by pro-employer members implementing laws designed to increase managerial authority and limit labour rights of all kinds. It is a drive to reinstate the 'master and servant' relationship which existed prior to the rise of labour rights accepted by the founders of the Australian Federation over a century ago.

There is no pretence that neo-liberal ideology will be applied to regulating labour. Labour will not be allowed to meet business on a level playing field. The new laws will create a nanny state for employers in Australia which outranks even the United States. By leaving the bones of the conciliation and arbitration system in place with its registration and regulation powers, but using it against unions and their members instead of it having anything approaching an independent role, Australian workers could end up with fewer rights than their counterparts in most developed countries.

Worst of all worlds

The Howard/Costello brave new world of industrial relations will leave Australian unions and workers with fewer rights than those in other comparable countries. For example, despite a unanimous ballot of employees in a workplace to conclude a collective employment agreement and to choose representation by a union, an employer will be able to refuse to enter an agreement or be able to ignore it and employ existing or future workers on inferior terms under an individual contract.

Any attempt to take strike action by employees against such an action will be illegal and punishable by fines or damages imposed on the union, on its officials, on workplace representatives and on individual members. In the USA, where union recognition processes have been followed, this is not possible.

At the same time, despite the rhetoric about enterprise bargaining to “find the best way for employers and employees by direct negotiations to suit the particular needs of both” the government will prohibit the inclusion into agreements and awards of issues which it deems intrude too far on managerial prerogative or don't pertain to the employment relationship. These will be prohibited *even where the employer has agreed to their inclusion*. While the list of “allowable matters” has not been announced at the time of writing, it will amount to further limits on the issues which unions are “allowed” to include in collective bargaining and awards.

Thus the gains which have been made to manage excessive workloads – for example by teachers in relation to staffing, class sizes and teaching hours and by nurses in relation to patient-to-bed ratios – will be illegal. Measures to provide job security in universities through limits on the level of casual employment will be outlawed.

The new industrial laws will give absolute primacy to individual contracts of employment as enshrined in Australian Workplace Agreements (AWAs). These will be able to reduce standards of employment relative to current Certified Agreements in force and be able to override them during the currency of their term. Once on AWAs, workers will no longer be able to participate legally in collective industrial action. This is the key feature of the AWA instrument which will enable to the employer to break up the collective arrangements which the majority of the workforce have decided to enter through a democratic ballot. This is a flagrant breach of Australia's obligations to support collective bargaining under the International Labour Organisation (ILO) Conventions 87 and 98.

The Howard government's claimed commitment to democratic processes in industrial relations is revealed as a sham when the detail of their scheme is examined. For example, a ballot will be required before industrial action is taken. Leaving aside the detailed technical requirements designed to make compliance next to impossible, this “democratic process” only works one way. A vote against industrial action binds everyone, and any worker who then goes on strike is doing so illegally. But a vote in favour of industrial action binds no-one, and each individual worker can quite legally decide to scab.

Similarly, the ballots required to approve a collective agreement will only be binding if they vote ‘no’. If a collective agreement is approved by democratic vote, and the employer agrees to its terms, there is nothing to prevent the employer from then picking workers off individually and forcing them onto AWAs instead.

The thin façade of democratic process fails to hide the underlying agenda – bolstering managerial “rights” at the expense of workers' rights to collective organisation through unions.

The ALP-ACTU Accord of 1983 was an attempt to implement a broader agenda for organised labour through the social wage and progressive regulation, while maintaining the industrial wage. That it became by 1986 a vehicle for corporatist policies to implement a business reform agenda is now a matter of record.

From 1986 the ALP was in the forefront of ‘reforms’ to decentralise industrial regulation in favour of enterprise bargaining which weakened the traditional award system of regulation. This was done in the name of meeting the need for flexibility and the needs of employers and employees. In response to the same ideology, the arbitral roles of the Industrial Commissions were weakened in favour of collective bargaining processes. This had the effect in some industries of breaking down the relevance of the award, which has lagged behind bargaining standards, leaving those who do not gain collective agreements languishing on a minimalist ‘safety net’.

However, those reforms maintained the rights of unions to represent their members, to enter workplaces and be party principals to industrial agreements and awards. Such agreements could not be overridden by individual contracts to break down the collective bargaining unit by dispersing it and making individuals vulnerable to managerial pressure.

Howard/Costello attempt to rewrite Federalism

In the current dispute, state and territory ALP governments are faced with threats to their traditional areas of responsibility in a potential trade-off of powers. The Howard government threatens to use its constitutional power to make laws for Corporations, and its power to make funding grants, to achieve one national industrial relations system. The Corporations Power has already been held by the High Court to extend to charities such as the Red Cross, universities, government instrumentalities such as the Hydro-Electric Commission in Tasmania and the GIO in NSW, as well as the RSPCA.

Except for Crown employees of the state governments, and unincorporated small businesses, everyone else (amounting to around 85% of the entire Australian workforce) can be controlled through this power, which is separate and distinct from the Commonwealth's constitutional power to prevent and settle industrial disputes.

This is based on a maximalist reading of High Court decisions, but even a minimalist reading would give the Commonwealth overwhelming control.

With that knowledge, the state governments are cornered into negotiating with the Commonwealth on industrial relations and a range of other issues. These negotiations will include the question of whether states should maintain their own industrial relations systems which some states want to retain but which others believe are an unnecessary expense.

Many Victorian workers escaped the brunt of the Kennett industrial revolution by gaining federal awards. Now that the federal jurisdiction looks like becoming even more toxic for working people, the Victorian government has said it has no intention of providing a venue for the rights of employees in its state. Given that industrial courts were one of the original reasons for the creation of the ALP, it is a sad comment on the decline of the class allegiance of that party.

How will the Unions respond?

The union movement has declined numerically relative to the total workforce but has held its membership level fairly steady at just less than two million for several years. However, this aggregate hides the fact that union density continues to fall in some private sector areas, particularly manufacturing, while there has been small growth in areas of the service sector. Public sector union density remains strong in international terms.

Despite its undoubted failings, the union movement is still the largest membership organisation in the country. It is the choice to join a union by two million citizens that the Federal Government wants to subvert and change, that lies at the core of its industrial relations agenda.

Conservatism and bureaucracy characterise the structure and work of many unions which grew complacent during the corporatist period of the Accord. Some unions still rely on the goodwill of employers through deductions from payroll and informal but effective 'no strike' agreements, for their survival. In the past decade a huge effort has been made to introduce the 'organising model' based on the work of some US unions to the Australian union movement. This has seen increases in membership in some areas.

The current crisis will force change in the operations of many unions - to be more democratic, more independent from political party interests, more responsive to members' needs and to adopt a wider vision to link with the activities of social movements, many of which involve large numbers of future workers. If this does not occur then some unions will struggle to survive.

Membership and community education

The first task of the union movement is to raise members' and public awareness of the meaning of the conservative agenda. Polling shows that both are sadly lacking, but that once informed about them both union members and non-members believe that unions are justified in fighting for the workers' rights which unions have defended for over a century.

Under the umbrella of the ACTU, Australian unions are contributing to an extensive paid media campaign prior to the new legislation coming in to effect. It will focus on the position in which individual workers will find themselves under the new laws.

In addition to paid media, unions are beginning to provide their own members with information about how their own workplace and incomes will be affected.

In the end, no campaign emanating from union centres will determine the outcome of this issue. While unions can provide information and training, it will be the organising capacity of workers in factories, schools, supermarkets, banks, hospitals and thousands of other venues who will determine whether the workplace culture is changed in the conservative image or not.

Nor will the outcome be finally determined by the passage of the new laws. The laws will be passed, but like the 'industrial revolution' of the Kennett government or the individual contracts of the Court Liberal government of Western Australia, the community can be won to understand and oppose the erosion of workers' rights and conditions and to eventually defeat the government itself.

Workers' rights go hand in hand with the services which government is supposed to provide or to ensure are provided at adequate standards. Thus education services will be harmed by the requirements which are being demanded of state and territory ministers to implement performance pay and individual employment contracts in schools and TAFE. Education is a collegial enterprise - it can only be harmed by requirements for individual advancement at the expense of fellow teachers or allied educators. There is no suggestion that education budgets will rise to fund improved performance, it will be rises for some and falls for others.

Similar IR conditions will soon be placed on access to federal funding for a wide range of services traditionally seen as the states' patch - education may be at the cutting edge of this agenda, but health and community services will no doubt soon follow. It will be the task of unions to campaign against the effects which the Howard industrial relations laws have on the services and products which workers provide.

Strategic militancy

Militancy will be essential in the current campaign to defend workers' rights, just as militancy has been needed in the past to both establish and defend rights. These laws are sure to provoke defiance, and defiance will be necessary. But it must be strategic defiance, founded on a disciplined and organised expression of workers' collective determination. Militant action is best taken when public support exists or can be won.

Paradoxically it may well be the business unions associated with the right wing of the ALP which suffer the most from the Howard laws. Unions which rely on employers for payroll deductions and have established their position by being 'reasonable' against alternative left-wing unions in manufacturing, mining and retail areas may well find that their employers decide to de-unionise. The changes may then have the effect of strengthening the more militant wing of the union movement by creating a vacuum into which organising unions can move.

Penal Powers campaign - a case study

The union movement is looking to past successful campaigns for strategic thinking. In the years leading up to 1969 when the penal powers in the Conciliation and Arbitration Act were neutralised, unions conducted a militant campaign against the powers which culminated in a general strike in 1969. Militancy went hand in hand with membership and community education about the rights of workers to take industrial action and not be fined.

The 1969 general strike signalled the end of the conservatives' attempt to rein in industrial militancy by using penal provisions. Their deactivation left the McMahon government without any credibility on industrial relations when confronting the challenge of the ALP in 1972. If a strategic approach of the same kind is taken in the lead-up to the next Federal election, a wide consensus could be established that the Howard government has run out of ideas and has no way forward for the country precisely because it had squandered its mandate on an unworthy cause - attacking workers' rights. This could contribute to the defeat of the Coalition in 2007 or before.

The general strike in 1969 was caused by unions' refusal to pay fines imposed by the courts for taking industrial action. This could be replicated in coming years as unions, officials and individual workplace representatives and members are brought before the courts for participating in 'illegal' industrial action in defiance of orders of the Commission.

A broad anti-conservative alliance

At the same time, the union movement needs to build effective links with the range of community organisations which are prepared to oppose the Howard Government's plans. A broad alliance of opposition is needed to build a movement capable of removing the Howard Government from office and introducing a new regime of laws which provide for workers' rights and the machinery for effective resolution of industrial disputes.

The need to build such an alliance challenges unions to build trust among churches, environment groups, human rights and refugee organisations, welfare groups, rural/regional interests, consumer advocates and organisations of all kinds for whom the Howard Government represents the ugly face of neo-liberal capitalism and corporate globalisation.

Further resources

- UnionsNSW – www.council.labor.net.au
- Queensland Council of Unions www.qcu.asn.au
- Unions Tasmania – www.unionstas.com.au
- Unions WA – www.tlcwa.org.au
- Australian Council of Trade Unions Rights at Work Campaign – www.actu.asn.au
- Unions ACT – www.unionsact.org.au
- SA Unions – www.utlc.org.au
- Victorian Trades Hall Council – www.vthc.org.au
- International Labour Organisation – www.ilo.org
- International Confederation of Free Trade Unions – www.icftu.org

This briefing paper was written by Rob Durbridge, former federal secretary Australian Education Union, for the conference: Advance Australia Fair – Building sustainability, justice and peace, 30-31 July 2005, Melbourne Trades Hall.

For more information about the conference, how to register, this particular workshop and the Now We The People network, please visit www.nowwethepeople.org.

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